

ENTERED

January 24, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JESSE GARZA JR., §
§
VS. § CIVIL ACTION NO. 7:18-CV-309
§
LORIE DAVIS, Director Texas §
Department of Criminal Justice, §
Correctional Institutions Division §

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is Petitioner Jesse Garza, Jr.'s petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, which had been referred to the Magistrate Court for a report and recommendation. On December 14, 2018, the Magistrate Court issued the Report and Recommendation, recommending that Petitioner's § 2254 petition be **DISMISSED** without prejudice for failure to exhaust and a Certificate of Appealability be **DENIED**. The time for filing objections has passed and no objections have been filed.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.¹ Finding no clear error, the Court adopts the Report and Recommendation in its entirety. Accordingly, it is hereby **ORDERED** that Petitioner's § 2254 petition is **DISMISSED** without prejudice and a Certificate of Appealability is **DENIED**.

SO ORDERED this 24th day of January, 2019, at McAllen, Texas.



Randy Crane
United States District Judge

¹ As noted by the Fifth Circuit, “[t]he advisory committee’s note to Rule 72(b) states that, ‘[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’ ” *Douglas v. United States Service Auto. Ass’n*, 79 F.3d 145, 1420 (5th Cir. 1996) (quoting Fed. R. Civ. P. 72(b) advisory committee’s note (1983)) *superceded by statute on other grounds by* 28 U.S.C. § 636(b)(1), *as stated in ACS Recovery Servs., Inc. v. Griffin*, No. 11-40446, 2012 WL 1071216, at *7 n. 5 (5th Cir. April 2, 2012).